

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 Chairman
5 JIM IRVIN
6 Commissioner
7 MARC SPITZER
8 Commissioner

9 **In the matter of:**

10 **BRUCE J. BLECHMAN**, an individual,
11 7122 East Night Glow Circle
12 Scottsdale, Arizona 85262-7048

) DOCKET NO. S-03376A-02-0000

) DECISION NO. 64848

13 **PRE-IPO VENTURE CAPITAL FUND, L.L.C.**,
14 an Arizona Limited Liability Company,
15 34522 North Scottsdale Road, Suite 615
16 Scottsdale, Arizona 85262,

) **ORDER TO CEASE AND DESIST,**
) **ORDER OF RESTITUTION, ORDER**
) **FOR ADMINISTRATIVE PENALTIES**
) **AND CONSENT TO SAME BY:**
) **RESPONDENT BRUCE J. BLECHMAN**
) **and RESPONDENT PRE-IPO**
) **VENTURE CAPITAL FUND, L.L.C.**

17 Respondents.
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Respondents Bruce J. Blechman and Pre-IPO Venture Capital Fund, L.L.C., collectively
“RESPONDENTS,” elect to permanently waive their right to a hearing and appeal under Articles
11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* (“Securities Act”), and
Articles 7 and 8 of the Arizona Investment Management Act, § 44-3101, *et seq.* (“Investment
Management Act”), in connection with this Order To Cease and Desist, Order of Restitution, Order
for Administrative Penalties and Consent to Same (“Order”). RESPONDENTS admit the
jurisdiction of the Arizona Corporation Commission (“Commission”); admit the Findings of Fact
and Conclusions of Law contained in this Order for the purpose of this proceeding only; and
consent to the entry of this Order by the Commission.

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I.**FINDINGS OF FACT**

1. Bruce J. Blechman ("BLECHMAN"), whose last known address was 7122 East Night Glow Circle, Scottsdale, Arizona, was the founder and general partner of Pre-IPO Capital Venture Fund, L.L.C., a venture capital enterprise first established by BLECHMAN in 1998 for the purpose of investing in various start-up companies.

2. Pre-IPO Venture Capital Fund, L.L.C. (the "FUND"), whose last known address was 34522 North Scottsdale Road, Suite 615, Scottsdale, Arizona, was a limited liability company founded in Scottsdale, Arizona by Blechman for the purpose of investing pooled venture capital into a range of developing companies.

3. During the latter part of 1998, BLECHMAN developed the concept of forming a venture capital company in order to make investments in a number of developmental stage companies in exchange for discounted equity interests in these companies.

4. As a method of identifying potential investors for this venture, BLECHMAN authored an on-line newsletter discussing the many advantages of investing in developing, or "Pre-IPO," companies.

5. As a result of this newsletter and its on-line "hits," RESPONDENTS were able to identify a potential investor listing for their venture capital fund concept.

6. On or about January 20, 1999, RESPONDENTS completed a private placement memorandum ("PPM") for this project; the PPM outlined the goals of the FUND and disclosed that the FUND sought to raise \$5,000,000 in investment capital.

7. The PPM stated that BLECHMAN would be the sole managing member of the FUND, would control, operate and administer the security offering on behalf of the FUND, and would bear ultimate responsibility for making all venture capital decisions on behalf of the FUND.

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1 8. Attachments to the PPM also stated that prior to making any venture capital
2 investments with the investors' funds, BLECHMAN would perform a careful due diligence review
3 and would consult with an experienced advisory panel.

4 9. The offering materials also stated that only active members of the FUND would be
5 engaged in the offer and sale of this investment program, that there would be no commissions in
6 connection with these sales, and that the administrative costs associated with placing the FUND'S
7 membership units would not exceed \$500,000.

8 10. RESPONDENTS' PPM failed to make any disclosures with respect to the large
9 amount of commissions that would be paid to outside salesmen in connection with the offer and
10 sale of membership units in the FUND.

11 11. RESPONDENTS' PPM also made inadequate disclosures with regards to the type and
12 amount of risk associated with this investment opportunity.

13 12. The PPM also omitted that roughly 5 years prior, in 1993, managing member
14 BLECHMAN had filed for bankruptcy.

15 13. In late January of 1999, RESPONDENTS engaged a California marketing company
16 by the name of Utility Consulting Group ("Utility") to assist in the offer and sell membership units
17 in the FUND.

18 14. Utility, located in Los Angeles, California, began soliciting investors based on a
19 listing of prospective investors developed by RESPONDENTS in conjunction with Utility's own
20 marketing leads. RESPONDENTS mailed offering materials, including PPMs, to Utility to
21 facilitate their sales efforts.

22 15. According to subsequent investors in the FUND, many of the sales pitches from these
23 salesmen failed to disclose material information about the investment, particularly with regard to
24 the substantial commissions associated with the sale of FUND units.

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1 16. In connection with the sale of FUND units, Utility salesmen received commissions at
2 a rate of approximately 35% to 50% of the amounts invested into the FUND. These sales
3 commissions were not disclosed to investors, either orally or in writing.

4 17. During this marketing phase for the FUND, BLECHMAN was pressed into increasing
5 the amount of commissions paid to these sales agents. Investment funds were also diverted
6 directly to Utility accounts on multiple occasions. These diverted investor funds were never
7 remitted to the FUND'S general accounts.

8 18. Blechman moved to end the FUND'S relationship with Utility in March of 1999. By
9 the time the relationship between RESPONDENTS and Utility had been terminated, this sales
10 group had diverted approximately \$57,000 in investor funds and had exacted at least \$32,000 in
11 commissions.

12 19. During the spring of 1999, RESPONDENTS sought to hire a different Los Angeles
13 marketing group to continue selling units in the FUND. In approximately May of 1999,
14 RESPONDENTS hired Galaxy Marketing Management ("Galaxy") to continue the marketing
15 efforts for the FUND.

16 20. Galaxy once again demanded substantial commissions for each sale, charging a
17 commission of approximately 35% on each FUND unit sold. The sales commissions paid by
18 RESPONDENTS to Galaxy sometimes reached up to 50% of the monies invested into the FUND.

19 21. Galaxy preferred to use sales leads primarily from their own sources. During their
20 period as RESPONDENTS' sales agents, Galaxy also diverted investment funds directly to their
21 own sales offices, at least some of which was never remitted to the FUND accounts.

22 22. During the period from May of 1999 to November of 1999, Galaxy retained over
23 \$605,000 in commissions from the sale of FUND units.

24 23. During the late spring of 1999, RESPONDENTS also hired a third Los Angeles
25 marketing group to offer and sell the remaining units available in their FUND.

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1 24. This third marketing group, Covenant Ventures, Inc. (“Covenant”), utilized sales leads
2 obtained from both RESPONDENTS and from their own databases. This marketing group
3 engaged in a pattern of providing misleading information to investors with respect to the FUND,
4 and investors recounted how the sales tactics were again often aggressive and/or deceptive.

5 25. As with the earlier sales operations, Covenant once again demanded exorbitant
6 commissions for their sale of FUND units, charging RESPONDENTS in excess of a 35%
7 commission on the majority of their FUND unit sales. Sales commissions reached upwards of
8 50% at some periods during 1999.

9 26. Ultimately, in the fall of 1999, BLECHMAN informed Covenant that the commissions
10 could no longer exceed 15%, and that no commission claims larger than that amount would be
11 paid. By the time sales activities from this third sales group came to a close, Covenant had exacted
12 at least an additional \$550,000 in sales commissions.

13 27. The sale of FUND units ultimately closed in approximately December of 1999. By
14 the time the sale of FUND units had ceased, RESPONDENTS had raised approximately
15 \$2,900,000 for the FUND from approximately 111 investors.

16 28. After consultations with replacement counsel, RESPONDENTS refunded the
17 investments of twenty of the FUND investors, including two Arizona-based investors. This
18 reimbursement, totaling \$280,000, came from FUND accounts.

19 29. Although the “private offering” raised approximately \$2,900,000 in investor funds, the
20 total amount actually reaching the FUND accounts totaled no more than \$1,300,000. The
21 remainder of the funds was spent primarily on commissions, legal fees and start-up costs. Sales
22 commissions alone consumed over \$1,300,000 of the investment funds.

23 30. BLECHMAN received some financial remuneration for managing the FUND,
24 consuming approximately \$170,000 of investor funds on personal and other miscellaneous
25 expenditures. Pursuant to the PPM, BLECHMAN was entitled to \$10,000 per month in
26 compensation for his managerial services in connection with the FUND.

1 31. The bulk of investment monies actually reaching the FUND were in fact invested in
2 several small start-up companies. These investments were selected by BLECHMAN without any
3 consideration from an advisory panel as prescribed in the FUND'S offering documentation.

4 32. Approximately \$770,000 in FUND assets was invested in seven separate start-up
5 companies. To date, none of these investments has produced any returns to the FUND, and few if
6 any of these start-up companies are now generating revenues. The FUND has determined to write
7 off these investments as capital losses.

8 33. After additional consultations with new counsel and other consultants,
9 RESPONDENTS attempted to provide a refund to the remaining investors who had made an
10 investment with the FUND. Approximately \$565,000 was refunded to the remaining FUND
11 investors on a pro rata basis from the personal family funds of BLECHMAN. In total, this
12 reimbursement constituted approximately 21% of the investments made by the remaining FUND
13 investors.

14 34. On September 15, 2000, RESPONDENTS filed an action in U.S. District Court for the
15 District of Arizona against William Conklin and Charles Koberg over the conduct of defendant
16 Conklin as legal counsel to the FUND (Case No. CIV 00-1770-PHX-SRB). The complaint
17 alleges, *inter alia*, that defendant Conklin made false and misleading representations under the
18 Securities Act of 1934 and the Nevada Revised Statutes in connection with his services for the
19 FUND.

20 35. RESPONDENTS have since cooperated with the Division in attempting to remedy the
21 Securities Act and Investment Management Act issues created by this offering. This cooperation
22 has included the disclosure of information and financial records relating to the sales operations of
23 the various organizations that offered and sold units in the FUND.

24 36. RESPONDENTS have also cooperated with the Division by providing full access to
25 company records, investment information and financial data.

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II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. RESPONDENTS offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by making untrue statements or misleading omissions of material facts.

6. RESPONDENTS violated A.R.S. § 44-3151 by acting as investment advisers or investment adviser representatives without licensure or exemption.

7. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. §§ 44-2032 and 44-3292.

8. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. §§ 44-2032 and 44-3292.

9. RESPONDENTS' conduct is grounds for administrative penalties pursuant to A.R.S. §§ 44-2036 and 44-3296.

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III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-3292, that RESPONDENTS, their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act and Investment Management Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-3292, that RESPONDENTS shall, jointly and severally, pay restitution to investors as shown on the records of the Commission in the amount of \$500,000. Restitution shall be made in installments as follows: an initial minimum payment of \$50,000, due and payable on the date of this Order; subsequent semi-annual payments of at least \$22,500, commencing on or before the 1st day of October, 2002, and continuing thereafter at six month intervals until the full restitution amount is paid in full. Any due and payable balance as outlined above shall accrue interest at the rate of 10% per annum from the scheduled date of payment until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-3296, that RESPONDENTS shall jointly and severally pay an administrative penalty in the amount of \$25,000, payable to the "State of Arizona." Payment shall be made in full by cashier's check or money order within 180 days from the date the ordered restitution is paid in full. This administrative penalty shall be reduced in half to \$12,500 if and when the restitution balance as outlined above is satisfied in full. If RESPONDENTS do not comply with the order for restitution

1 and administrative penalties, any outstanding balance may be deemed in default and shall be
2 immediately due and payable.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

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5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
11 Executive Secretary of the Arizona Corporation
12 Commission, have hereunto set my hand and caused
13 the official seal of the Commission to be affixed at
14 the Capitol, in the City of Phoenix, this _____ day
15 of _____, 2002.

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BRIAN C. McNEIL
Executive Secretary

DISSENT

This document is available in alternative formats by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

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CONSENT TO ENTRY OF ORDER

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2 1. Respondent Bruce J. Blechman ("BLECHMAN"), an individual, admits the
3 jurisdiction of the Commission over the subject matter of this proceeding. BLECHMAN
4 acknowledges that he has been fully advised of his right to a hearing to present evidence and call
5 witnesses and BLECHMAN knowingly and voluntarily waives any and all rights to a hearing
6 before the Commission and all other rights otherwise available under Article 11 of the Securities
7 Act, Article 7 of the Investment Management Act, and Title 14 of the Arizona Administrative
8 Code. BLECHMAN acknowledges that this Order to Cease and Desist, Order of Restitution,
9 Order for Administrative Penalties and Consent to Same (hereinafter "Order") constitutes a valid
10 final order of the Commission.

11 2. BLECHMAN knowingly and voluntarily waives any right he may have under Article
12 12 of the Securities Act and/or Article 8 of the Investment Management Act to judicial review in
13 any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

14 3. BLECHMAN acknowledges and agrees that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. BLECHMAN acknowledges that he has been represented by counsel in this matter,
17 that he has reviewed this Order with his attorney, and that he understands each of the terms and
18 conditions contained therein.

19 5. BLECHMAN admits the Findings of Fact and Conclusions of Law contained in this
20 Order for the purpose of this proceeding only. BLECHMAN agrees that he shall acknowledge the
21 existence of this Order in any present or future administrative proceeding before the Commission
22 or before any other state agency in connection with the issuance of any license or registration
23 required to engage in the practice of selling securities or provision of investment advisory services.

24 6. By consenting to the entry of this Order, BLECHMAN agrees not to take any action or
25 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
26 Fact or Conclusion of Law in this Order or creating the impression that this Order is without

1 factual basis. BLECHMAN will undertake steps necessary to assure that all of his agents and
2 employees understand and comply with this agreement.

3 7. While this Order settles this administrative matter between BLECHMAN and the
4 Commission, BLECHMAN understands that this Order does not preclude the Commission from
5 instituting other administrative proceedings based on violations that are not addressed by this
6 Order.

7 8. BLECHMAN understands that this Order does not preclude the Commission from
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
9 that may be related to the matters addressed by this Order.

10 9. BLECHMAN understands that this Order does not preclude any other agency or
11 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
12 proceedings that may be related to matters addressed by this Order.

13 10. BLECHMAN agrees that he will not apply to the state of Arizona for registration as a
14 securities dealer or salesman or for licensure as an investment adviser or investment adviser
15 representative until such time as all restitution and penalties under this Order are paid in full.

16 11. BLECHMAN agrees that he will not exercise any control over any entity that offers or
17 sells securities or provides investment advisory services, within or from Arizona.

18 12. BLECHMAN agrees that until restitution and penalties are paid in full, BLECHMAN
19 will notify the Director of the Securities Division within 30 days of any change in home address or
20 any change in BLECHMAN'S ability to pay amounts due under this Order.

21 13. BLECHMAN understands that a default shall render him liable to the Commission for
22 its costs of collection and interest at the maximum legal rate.

23 14. BLECHMAN agrees that he will continue to cooperate with the Securities Division
24 including, but not limited to, providing complete and accurate testimony at any hearing in this
25 matter and cooperating with the state of Arizona in any related investigation or any other matters
26 arising from the activities described in this Order.

1 15. BLECHMAN consents to the entry of this Order and agrees to be fully bound by its
2 terms and conditions. If BLECHMAN breaches any provision of this Order, the Commission may
3 vacate this Order and restore this case to its active docket.

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5 _____
6 Respondent Bruce J. Blechman
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8 SUBSCRIBED AND SWORN TO before me, by Bruce J. Blechman, this _____ day of
9 _____, 2002.
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13 NOTARY PUBLIC
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15 My Commission Expires:
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CONSENT TO ENTRY OF ORDER

1
2 1. Respondent Pre-IPO Venture Capital Fund, L.L.C. ("CAPITAL FUND"), an Arizona
3 entity, admits the jurisdiction of the Commission over the subject matter of this proceeding.
4 CAPITAL FUND acknowledges that it has been fully advised of its right to a hearing to present
5 evidence and call witnesses and that CAPITAL FUND knowingly and voluntarily waives any and
6 all rights to a hearing before the Commission and all other rights otherwise available under Article
7 11 of the Securities Act, Article 7 of the Investment Management Act, and Title 14 of the Arizona
8 Administrative Code. CAPITAL FUND acknowledges that this Order to Cease and Desist, Order
9 of Restitution, Order for Administrative Penalties and Consent to Same (hereinafter "Order")
10 constitutes a valid final order of the Commission.

11 2. CAPITAL FUND knowingly and voluntarily waives any right it may have under
12 Article 12 of the Securities Act and/or Article 8 of the Investment Management Act to judicial
13 review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this
14 Order.

15 3. CAPITAL FUND acknowledges and agrees that this Order is entered into freely and
16 voluntarily and that no promise was made or coercion used to induce such entry.

17 4. CAPITAL FUND acknowledges that its principal has been represented by counsel in
18 this matter, that it's principal has reviewed this Order with his attorney, and that it's principal
19 understands each of the terms and conditions contained therein.

20 5. CAPITAL FUND admits the Findings of Fact and Conclusions of Law contained in
21 this Order for the purpose of this proceeding only. CAPITAL FUND agrees that it shall
22 acknowledge the existence of this Order in any present or future administrative proceeding before
23 the Commission or before any other state agency in connection with the issuance of any license or
24 registration required to engage in the practice of selling securities or provision of investment
25 advisory services.

26 . . .

1 6. By consenting to the entry of this Order, CAPITAL FUND agrees not to take any
2 action or to make, or permit to be made, any public statement denying, directly or indirectly, any
3 Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is
4 without factual basis. CAPITAL FUND will undertake steps necessary to assure that all of its
5 agents and employees understand and comply with this agreement.

6 7. While this Order settles this administrative matter between CAPITAL FUND and the
7 Commission, CAPITAL FUND understands that this Order does not preclude the Commission
8 from instituting other administrative proceedings based on violations that are not addressed by this
9 Order.

10 8. CAPITAL FUND understands that this Order does not preclude the Commission from
11 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
12 that may be related to the matters addressed by this Order.

13 9. CAPITAL FUND understands that this Order does not preclude any other agency or
14 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
15 proceedings that may be related to matters addressed by this Order.

16 10. CAPITAL FUND agrees that it will not apply to the state of Arizona for registration
17 as a securities dealer or salesman or for licensure as an investment adviser or investment adviser
18 representative until such time as all restitution and penalties under this Order are paid in full.

19 11. CAPITAL FUND agrees that it will not exercise any control over any entity that
20 offers or sells securities or provides investment advisory services, within or from Arizona.

21 12. CAPITAL FUND agrees that until restitution and penalties are paid in full, CAPITAL
22 FUND will notify the Director of the Securities Division within 30 days of any change in address
23 or any change in CAPITAL FUND'S ability to pay amounts due under this Order.

24 13. CAPITAL FUND understands that a default shall render it liable to the Commission
25 for its costs of collection and interest at the maximum legal rate.

26 . . .

14. CAPITAL FUND agrees that it will continue to cooperate with the Securities Division including, but not limited to, providing complete and accurate testimony at any hearing in this matter, providing corporate documents and financial information from CAPITAL FUND'S record repository as requested, and cooperating with the state of Arizona in any related investigation or any other matters arising from the activities described in this Order.

15. CAPITAL FUND consents to the entry of this Order and agrees to be fully bound by its terms and conditions. If CAPITAL FUND breaches any provision of this Order, the Commission may vacate this Order and restore this case to its active docket.

Pre-IPO Venture Capital Fund, L.L.C.

By:

Its: Managing Member

SUBSCRIBED AND SWORN TO before me, by Bruce J. Blechman, this _____ day of _____, 2002.

NOTARY PUBLIC

My Commission Expires: